

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into between the State of California Air Resources Board (hereinafter "ARB"), with its principal office at 1001 "I" Street, Sacramento, California, and Two Brothers Racing, Inc., (hereinafter "TWO BROTHERS") with its principal place of business at 401 South Grand Avenue, Santa Ana, California 92705, "the Parties" hereinafter.

RECITALS

1. Vehicle Code section 27156(c) provides, in pertinent part, that "No person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."
2. Vehicle Code section 27156(h) provides, in pertinent part, that this section shall not apply to an alteration, modification, or modifying device found by resolution of the State Air Resources Board to either not reduce the effectiveness of any required motor vehicle pollution control device or result in emissions from any such modified or altered vehicle which are at levels that comply with existing state or federal standards for the model year of the vehicle being modified or converted.
3. California Code of Regulations, title 13, section 2222(e) states, "The executive officer may exempt add-on and modified parts based on an evaluation conducted in accordance with the "Procedures for Exemption of Add-on and Modified Parts," adopted by the state board on November 4, 1977, as amended June 1, 1990.
4. California Code of Regulations, title 13, section 2222(j) provides, "The Executive Officer shall exempt aftermarket critical emission control parts on highway motorcycles from the prohibitions of California Vehicle Code sections 27156 and 38391 based on an evaluation conducted in accordance with the "California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles" (The Procedures), as adopted on January 22, 2009, which is incorporated by reference herein."
5. The Procedures provide, "If the Executive Officer finds that any manufacturer, distributor, retailer, or installer is manufacturing, supplying, distributing, offering for sale, selling, advertising, or installing an aftermarket critical emission control part for use on highway motorcycles in California in violation of these evaluation procedures, he or she may enjoin said manufacturer, distributor, retailer, or installer from any further manufacture, supply, distribution, offer for sale, sale, advertisement, or installation pursuant to section 43017 of the Health and safety Code. The Executive Officer may also assess civil penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code."

6. California Code of Regulations, title 13, section 2225(a) provides, in pertinent part, that the executive officer may seek fines for violations of Vehicle Code section 27156.
7. Health and Safety Code section 43016 states, in pertinent part, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500) per vehicle."
8. On March 29, 2013, ARB sent TWO BROTHERS a letter requesting that TWO BROTHERS cease and desist from selling aftermarket parts for motor vehicles in California that have not been exempted by ARB. The letter also requested TWO BROTHERS identify all sales of such parts in California.
9. TWO BROTHERS promptly responded and identified the Juicebox Pro (a fuel controller) and several slip-on mufflers, along with the quantity sold of each in California or to persons in California prior to June 2013 (hereinafter "the subject aftermarket parts").
10. ARB alleges that prior to June 30, 2013, TWO BROTHERS sold, offered for sale, and/or advertised the subject aftermarket parts that were not exempted by ARB pursuant to California Code of Regulations, title 13, section 2222.
11. If the allegations described in recital paragraphs 1 through 10 hereinabove were proven, penalties could be imposed against TWO BROTHERS pursuant to Health and Safety Code section 43016 for each and every violation alleged.
12. TWO BROTHERS instituted a number of actions to mitigate the facts alleged in recital paragraphs 1 through 10. First, TWO BROTHERS immediately ceased selling aftermarket parts into California after receiving ARB's cease and desist letter. Second, TWO BROTHERS changed its website to prohibit any sales to California customers or addresses in California. Third, TWO BROTHERS placed a warning on its website, invoice, product packaging, product page, checkout page, and on the muffler to the effect that the part was to be used for racing purposes only. Fourth, TWO BROTHERS warned its customers that the use of these aftermarket parts would void the vehicles' warranty.
13. TWO BROTHERS fully cooperated with ARB in its investigation of the subject aftermarket parts.
14. TWO BROTHERS admits the facts as alleged in recital paragraphs 1 through 10 above, but denies any liability resulting from the allegations therein.
15. TWO BROTHERS is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. The ARB accepts this Agreement in

termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

RELEASE

In consideration of ARB not filing a legal action against TWO BROTHERS for the alleged violations referred to above, ARB and TWO BROTHERS agree as follows:

1. TWO BROTHERS shall pay the total sum of thirty-four thousand dollars (\$34,000) to the California Air Pollution Control Fund. A payment of seventeen thousand dollars (\$17,000) shall be made no later than two months after complete execution of this Agreement. One additional payment of seventeen thousand dollars (\$17,000) shall be made no later than ten months thereafter. Payment shall be made by certified check payable to the **California Air Pollution Control Fund** and addressed to:

Tony Zeng
Air Resources Board
Enforcement Division
9460 Telstar Avenue
El Monte, California 91731

2. Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance shall become immediately due and payable without notice or demand. In addition, if the Attorney General files a civil action to enforce this settlement agreement, TWO BROTHERS shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
3. It is agreed that if TWO BROTHERS at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving TWO BROTHERS, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against TWO BROTHERS, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of TWO BROTHERS's properties, or if any deposit account or other property of TWO BROTHERS be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or TWO BROTHERS takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
4. It is agreed that the penalty described in terms and release paragraph 1 is punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish TWO BROTHERS for violations of state environmental statutes, and this penalty is payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that this penalty imposed on TWO BROTHERS by ARB arising from the facts described in recital paragraphs 1 – 10 are nondischargeable under 11 U.S.C § 523 (a)(7), which provides an exception from discharge for any debt to the extent

such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

5. TWO BROTHERS shall not install, sell, offer for sale, or advertise any device in California intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system unless it has first received an exemption from ARB or the device is used exclusively for racing purposes.
6. This Agreement shall apply to and be binding upon TWO BROTHERS and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
7. Now therefore, in consideration of the payment by TWO BROTHERS in the amount of thirty-four thousand dollars (\$34,000) to the California Air Pollution Control Fund, ARB hereby releases TWO BROTHERS and its principals, officers, agents, subsidiaries, predecessors, and successors from any and all claims ARB may have based upon the events described in recital paragraphs 1 through 10 hereinabove, including claims under Vehicle Code section 27156 and California Code of Regulations, title 13, section 2222 et seq. for the subject aftermarket parts. The undersigned represent that they have the authority to enter this Agreement.
8. This Agreement constitutes the entire agreement and understanding between ARB and TWO BROTHERS concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and TWO BROTHERS concerning these claims.
9. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
10. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
11. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.

12. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
13. Waiver. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
14. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

15. SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The maximum per unit penalty in this case is \$500 per unit per strict liability violation. The penalty obtained in this case is \$250.00 per unit for 136 units. This reflects the consideration of a number of facts, including:

- that this was an unintentional, first time violation,
- TWO BROTHERS' immediate response to ARB's cease and desist letter by removing the California selection from its website and stopping shipment of all products to California customers,
- TWO BROTHERS' diligent efforts to comply and to cooperate with the investigation,
- TWO BROTHERS has no prior federal, state, county, or city violation or enforcement action since its inception in 1985, and
- the impact of current economic conditions on the industry.

The provision of law the penalty is being assessed under and why that

provision is most appropriate for that violation.

ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because TWO BROTHERS allegedly sold, and/or offered for sale, and/or advertised the subject aftermarket parts that were not exempted pursuant to California Code of Regulations, title 13, section 2222.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the uncertified aftermarket parts. However, since the aftermarket parts were not certified for sale in California, emissions attributable to them are illegal. The parties had adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.

16. TWO BROTHERS acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
17. Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. The penalty was discounted in this matter based on the fact that this was an innocent, first time violation and because TWO BROTHERS made diligent efforts to comply and to cooperate with the ARB's investigation. Penalties in future cases might be smaller or larger on a per unit basis.
18. The penalty in this case was based in part on confidential business information provided by TWO BROTHERS that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and TWO BROTHERS that ARB does not retain in

the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against TWO BROTHERS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TWO BROTHERS may have secured from its alleged actions.

California Air Resources Board

By: Ellen M. Peter

Name: Ellen M. Peter

Title: Chief Counsel

Date: 8/21/2013

TWO BROTHERS RACING, INC.

By: Craig Eriani

Name: CRAIG ERIANI

Title: FOUNDER

Date: AUGUST 9, 2013